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2385040

CaseNumber: WR-72,702-01

EventDate: 09/28/2009

Style 1: LUCIO, MELISSA ELIZABETH AND JOHN HENRY RAM

Style 2:

Event code: MISC DOCUMENT RECD

EventID: 2385040

Applicant first name: MELISSA ELIZABETH & JOHN HENRY RAMIREZ

Applicant last name: LUCIO

Offense: 19.03

Offense code: Capital Murder

Trial court case number: 07-CR-885-B

Trial court name: 138th District Court

Trial court number: 320310138

County: Cameron

Trial court ID: 148

Event map code: GENERIC

Event description:

Event description code:

Remarks: MOTION FOR LEAVE TO FILE AMENDED
PETITION (ADDITIONAL PARTY); RELATOR'S
FIRST AMENDED PETITION FOR PROHIBITION

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APPLICANT MELISSA ELIZABETH LUCIO

APPLICATION NOS. 72,702-01

MOTION FOR LEAVE TO FILE
AMENDED PETITION (ADDITIONAL
PARTY) AND RELATOR'S FIRST
AMENDED PETITION FOR PROHIBITION
OR MANDAMUS TEX.R.APP.P. 72.1

XXX

DENY MOTION WITHOUT WRITTEN ORDER.

Per Curiam
JUDGE

10/15/09
DATE

APPLICANT JOHN HENRY RAMIREZ

APPLICATION NOS. 72,735-01

MOTION FOR LEAVE TO FILE
AMENDED PETITION (ADDITIONAL
PARTY) AND RELATOR'S FIRST
AMENDED PETITION FOR PROHIBITION
OR MANDAMUS TEX.R.APP.P. 72.1

XXX

DENY MOTION WITHOUT WRITTEN ORDER.

Per Curiam
JUDGE

10/15/09
DATE

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No.

In the Court of Criminal Appeals of Texas

In re: Melissa Elizabeth Lucio, Appellant in Cause No.AP 76,020 now pending in this Court, and John Henry Ramirez, Appellant in Cause No.AP 76,100 now pending in this Court, and Larry Warner, Attorney for each of them in the noted appeals, Relators

MOTION FOR LEAVE TO FILE AMENDED
PETITION(ADDITIONAL PARTY)

**RECEIVED IN
COURT OF CRIMINAL APPEALS**

SEP 28 2009

Louise Pearson, Clerk

Larry Warner,
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the United States(1984)
Relator, Attorney for Relators

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To the Honorable Presiding Judge and the Judges of the Court of Criminal Appeals of Texas:

Relators move the Court of Criminal Appeals of Texas for leave to file an amended petition specifying additional parties and asking for additional relief, as follows:

1. Civil principles govern mandamus. **In re State**, No. 01-02-00923-CV(Tex.App.–Houston[1st Dist.]Sept.5,2002,no pet.)(not selected for publication)2002 WL 2027322

2. The relevant Rules provide:

“The object of an amendment, as contra-distinguished from a supplemental petition or answer, is to add something to, or withdraw something from, that which has been previously pleaded so as to perfect that which is or may be deficient, or to correct that which has been incorrectly stated by the party making the amendment, or to plead new matter, additional to that formerly pleaded by the amending party, which constitutes an additional claim or defense permissible to the suit.”TEX.R.CIV.P.62

“Parties may amend their pleadings, respond to pleadings on file of other parties, file suggestions of death and make representative parties, and file such other pleas as they may desire by filing such pleas with the clerk at such time as not to

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operate as a surprise to the opposite party; provided, that any pleadings, responses or pleas offered for filing within seven days of the date of trial or thereafter, or after such time as may be ordered by the judge under Rule 166, shall be filed only after leave of the judge is obtained, which leave shall be granted by the judge unless there is a showing that such filing will operate as a surprise to the opposite party."TEX.R.CIV.P.62

3. Relators seek to add as a party the committee for selection of capital counsel for the Fifth Administrative Judicial Region. TEX.CODE CRIM.P.art.26.052(c) Relators seek to compel the Committee not to remove Mr. Warner as capital appellate counsel for the Fifth Administrative Judicial Region. Relators seek to compel the Committee to place Mr. Warner on the list of attorneys approved for appointment as capital appellate counsel for the Fifth Administrative Judicial Region. Relators seek notice of the Committee's reason for removing Mr. Warner from the list of attorneys approved for appointment as capital appellate counsel for the Fifth Administrative Judicial Region. Relators seek an opportunity to be heard on placement on or removal of Mr. Warner from the list of attorneys approved for appointment as capital appellate counsel for the Fifth Administrative Judicial Region.

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4. Adding the Committee as a party will not surprise the current party, the Presiding Judge of the Fifth Administrative Region, since he is a member of the Committee. TEX.R.CIV.P.62

5. A "court has no discretion to refuse leave to amend pleading unless opposing party presents evidence of surprise or prejudice, or amendment asserts new cause of action and opposing party objects." **Clade v. Larsen** 838 S.W.2d 277(Tex.App.-Dallas 1992,pet. denied) Relators' amendment merely adds an additional party, the noted Committee, in order to obtain full relief.

Conclusion and request for relief

The Court of Criminal Appeals of Texas should allow Relators to amend to add the Committee on Capital Counsel for the Fifth Administrative Region to be joined as a party and to seek the same relief against the Committee as against the current party.

Respectfully submitted

this September 25, 2009,


Larry Warner

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Attorney at law/Attorney for
Appellants/Relators
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Supreme Court of the United States(1984)

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No.

In the Court of Criminal Appeals of Texas

In re: Melissa Elizabeth Lucio, Appellant in Cause No.AP 76,020 now pending in this Court, and John Henry Ramirez, Appellant in Cause No.AP 76,100 now pending in this Court, and Larry Warner, Attorney for each of them in the noted appeals, Relators

Certificate of Service of Amended Petition

I certify that I will personally cause to be delivered a true copy of the Amended Petition to Hon. Armando Villalobos, District Attorney at 974 East Harrison St., Brownsville, Tx 78520 on September 24, 2009 If I can find out his email address, I will send those items on September 14, 2009 and will advise the Court that I have done that.

I certify that I sent a true copy of the Amended Petition to 5thadmin.region@co.nueces.tx.us to the Presiding Judge of the Fifth Administrative Region.

I certify that I sent a true copy of the Amended Petition to joann.gutierrez@co.nueces.tx.us to the secretary for the Presiding Judge of the Fifth Administrative Region.

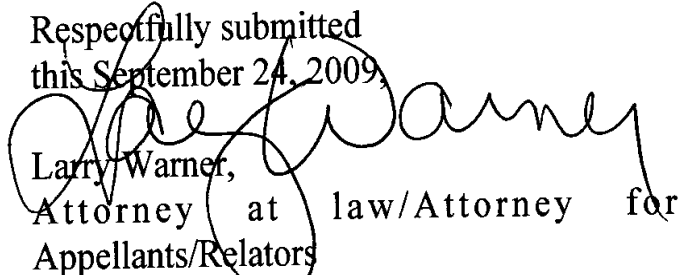
I certify that I sent a true copy of the Amended Petition to Hon. Carlos Valdez, District Attorney, Nueces County Courthouse, 901 Leopard, Corpus Christi, Tx at the blind email on his website.

I certify that I will cause to be delivered a true copy of the Amended Petition to Hon. Arturo Cisneros Nelson at the Cameron Courthouse , 974 East Harrison, Brownsville, Tx on 9 14 09.

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I am causing those items to be sent on September 24, 2009.

Respectfully submitted
this September 24, 2009,



Larry Warner,
Attorney at law/Attorney for
Appellants/Relators

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Harlingen, Texas 78550 8658 45

956 542 4784

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Member of the Bar of the

Supreme Court of the United States(1984)

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Express

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2 Your Internal Billing Reference

3 To
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 Company SUPREME Ct. of Tx Bldg
 Recipient's Address 201 W. 14th St. Rm. 104
 Address Austin State TX ZIP 78701



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 Packages up to 150 lbs. * To most locations.

4b Express Freight Service
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 Packages over 150 lbs. * To most locations.

5 Packaging
☐ FedEx Envelope*
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6 Special Handling
☐ SATURDAY Delivery: Not available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.
☐ HOLD Weekday at FedEx Location: Not available for FedEx First Overnight.
☐ HOLD Saturday at FedEx Location: Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.
 Does this shipment contain dangerous goods?
☒ No ☐ Yes As per attached Shipper's Declaration and required. ☐ Yes Shipper's Declaration not required.
 Dangerous goods (including dry ice) cannot be shipped in FedEx packaging. ☐ Dry Ice: Dry Ice < 100 lbs. ☐ Cargo Aircraft Only.
 Obtain Priority: ☐ Obtain Priority: ☐

7 Payment Bill to:
☒ Sender: Enter FedEx Acct. No. or Credit Card No. below.
☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check
 Total Packages 1 Total Weight 17 Total Declared Value* \$ 100
 *Our liability is limited to \$100 unless you declare a higher value. See back for details. Credit Card Auth.

8 Residential Delivery Signature Options
☒ No Signature Required: Packages may be left without obtaining a signature for delivery.
☐ Direct Signature: Someone at recipient's address may sign for delivery. For applies.
☐ Indirect Signature: If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For applies.
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Terms And Conditions

Definitions On this Airbill, "we," "our," "us," and "FedEx" refer to Federal Express Corporation, its employees, and agents. "You" and "your" refer to the sender, its employees, and agents.

Agreement To Terms By giving us your package to deliver, you agree to all the terms on this Airbill and in the current FedEx Service Guide, which is available upon request. You also agree to those terms on behalf of any third party with an interest in the package. If there is a conflict between the current FedEx Service Guide and this Airbill, the current FedEx Service Guide will control. No one is authorized to change the terms of our Agreement.

Responsibility For Packaging And Completing Airbill You are responsible for adequately packaging your goods and properly filling out this Airbill. If you omit the number of packages and/or weight per package, our bill will be based on our best estimate of the number of packages we received and/or an estimated "default" weight per package as determined by us.

Responsibility For Payment Even if you give us different payment instructions, you will always be primarily responsible for all delivery costs, as well as any cost we incur in either returning your package to you or warehousing it pending disposition.

Limitations On Our Liability And Liabilities Not Assumed

- Our liability in connection with this shipment is limited to the lesser of your actual damages or \$100, unless you declare a higher value, pay an additional charge, and document your actual loss in a timely manner. You may pay an additional charge for each additional \$100 of declared value. The declared value does not constitute, nor do we provide, cargo liability insurance.
- In any event, we will not be liable for any damage, whether direct, incidental, special, or consequential, in excess of the declared value of a shipment, whether or not FedEx had knowledge that such damages might be incurred, including but not limited to loss of income or profits.

We won't be liable:

- for your acts or omissions, including but not limited to improper or insufficient packing, securing, marking, or addressing, or those of the recipient or anyone else with an interest in the package.
- if you or the recipient violates any of the terms of our Agreement.
- for loss of or damage to shipments of prohibited items.
- for loss, damage, or delay caused by events we cannot control, including but not limited to acts of God, perils of the air, weather conditions, acts of public enemies, war, strikes, civil commotions, or acts of public authorities with actual or apparent authority.

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- The highest declared value allowed for a FedEx Envelope or FedEx Pak shipment is \$500.
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If the recipient accepts your package without noting any damage on the delivery record, we will assume the package was delivered in good condition. For us to process your claim, you must make the original shipping cartons and packing available for inspection.

Right To Inspect We may, at our option, open and inspect your packages before or after you give them to us to deliver.

Right Of Rejection We reserve the right to reject a shipment when such shipment would be likely to cause delay or damage to other shipments, equipment, or personnel; or if the shipment is prohibited by law; or if the shipment would violate any terms of our Airbill or the current FedEx Service Guide.

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